

IV. REMARKS**Status of the Claims**

Claims 1, 4, and 5 are amended, and claims 29 and 33 are canceled. Claims 1-5, and 28 are now under consideration. Claims 30-32 are withdrawn by the Examiner and applicant objects to such withdrawal as indicated below.

Applicant again submits a copy of a drawing sheet having figures 6c and 6d thereon consistent with previous amendments. Applicant submits that said drawing sheet was duly submitted with the prior response.

Applicant has amended claims 4 and 5 for clarity. Applicant submits that with the addition of figures 6c and 6d, the previous amendment, and the current amendment, the rejection based on 35USC112 is fully met.

Applicant submits that the restriction requirement as applied to claims 30-32 is not proper. These claims do not represent independent inventions, but are reliant on generic claim 1. There is therefore no proper basis for restriction and the Examiner is requested to reconsider the restriction requirement as applied to claims 30-32.

Applicant has amended the claims to clarify the novel features of the invention for which protection is sought in this application. These amendments are submitted after final rejection in order to place the claims in condition for allowance or in the alternative to place the claims in better condition for appeal. The Examiner is requested to exercise his discretion and enter these amendments.

Summary of the Office Action

Claims 1-2 and 28 stand rejected under 35USC102(e) on the basis of the cited reference Castiel, U.S. Patent No. 6,249,672. Claims 3-5 stand rejected under 35USC103(a) based on the cited reference Castiel in view of the cited reference Holmberg, U.S. Patent No. 6,568,956. Claims 29 and 33 stand rejected under 35USC103(a) based on the cited reference Castiel in view of the cited reference Gray, U.S. Patent No. 5,440,629.

The telephone of this invention is described in amended claim 1 having a lower part configured for gripping the telephone and an upper part which is contained within the lower part for sliding motion. The motion allows the upper part to be extended upward to expose the upper part and the user interface of the device. The grip part is a shell that can be grasped by the user and supports the body portion in its extended use position.

The Examiner continues to cite the reference Castiel which describes a telephone having two modules, each of which includes different electronics. (see column 2, lines 6-9). As shown in figures 1a and 3, module 102 contains the display, loudspeaker, power switch and antenna, while module 104 contains the microphone and keyboard. Obviously one of the modules needs to be held, when the phone is in use, and this clearly is the body part 102. Castiel describes body part 102 in column 2, lines 28-32 as follows:

"The slidable module 102 is not just a cover, but in fact includes electronic portions. Module 102 includes the menu 114 which displays information, and also holds the logo portion 130."

As indicated in the claims the grip portion of this invention serves mainly as a means by which the telephone may be held. The operation of the telephone of this application is opposite

to that of Castiel in that the main portion of the telephone extends upward from the grip portion during use. This provides ergonomic and electronic advantages.

Contrary to the Examiner's position, the antenna of the Castiel phone will definitely be shadowed by the user's hand while he is talking because the antenna is in module 102 of Castiel which is the module that is held. In the present invention this is not the case, because the antenna is in the body part, which pops upwards from the grip part and thus brings the antenna at least as far from the shadow of the hand as possible. It is true that all of these phones are small, as the Examiner has pointed out, but it should be noted that bringing the antenna even only a couple of centimetres out of the immediate shadow of the user's hand will help a lot in avoiding attenuation. There will be considerably more incidence of antenna shadowing in Castiel than is possible in Applicant's device.

Another consequence of the configuration of Castiel in which the phone held held by module 102 is related to the center of gravity. The antenna, display (with its glass plate(s)) and the loudspeaker are easily among the heaviest components of the phone. Castiel positions these into that part of the phone that will be held in the user's grip, while in the applicant's solution the grip part being "sleeve-like" means that it is unlikely to be very heavy. The configuration of this application therefore, moves the center of gravity away from the grip portion a distance from the user's grip to the extent of the sliding motion of the body part. This will add stability in the operational position.

This feature of distributing the components and masses of a portable telephone device is important to provide a telephone

that is comfortable when in use (see column 7, lines 23-36 of the reference Gray with respect to "solid feel"). The applicant has managed to find an optimal solution concerning usability and ergonomics, which solution is neither anticipated nor made obvious by the cited prior art publications.

The Examiner's arguments about turning Castiel's phone upside down are not persuasive, because it is the normal operational position of the telephone of Castiel that constitutes the teaching of Castiel and such is not subject to alternatives conjured up by the Examiner. Operation of the telephone of Castiel as suggested by the examiner would render it unusable. There is no avoiding the conclusion that the operation of the telephone of Castiel is significantly different than that of the subject application. The elements of Castiel are not arranged in the same way to achieve the same result. Therefore, the cited reference Castiel does not support the rejection by the Examiner based on anticipation.

In support of the rejection of the elements of claims 29 and 33, which are contained in claim 1, based on obviousness, the Examiner has additionally cited Gray (US 5,440,629) to show a sleeve-like grip part at the lower part of the telephone apparatus to remedy the admitted deficiencies of the teaching of Castiel. The telephone of Gray comprises a chassis 12 having end closures 24 and 26 attached to the chassis for both sliding and pivotal motion. The chassis is designed for comfortable gripping by the user, when the end closures are each extended in opposing directions to allow exposure of the chassis (see column 7, lines 25-28). It is noted that the antenna is contained in the lower end closure so that it will inevitably remain in the shadow of the user's hand. There is no indication in either the

cited reference Castiel or the reference Gray that a combination of the teachings would be advantageous. What function could the end closures of Gray provide in the telephone of Castiel?

Applicant submits that the modification of the teachings of Castiel and Gray in order to obtain the invention, as described in the amended claims submitted herein, would not have been obvious to one skilled in the art. There is no indication that such a modification would be desirable or even possible.

The cited reference Holmberg describes a mechanism for holding and releasing a battery pack for a radio telephone. It does not remedy the deficiencies in the disclosure of Castiel indicated above. There is nothing in the reference Holmberg with reference to a gripping part for a telephone.

The above arguments are equally applicable to the rejected dependent claims 2-5 and 28.

In view of the above deficiencies of the teaching of Castiel, the combination proposed by the Examiner does not support the rejection under 35USC 103(a).

In view of the remarks stated above, Applicant submits that all of the claims under consideration contain patentable subject matter and favorable action by the Examiner is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for a one month extension and any fees associated with this